No: 484706
Clark County Superior Court No: 15-1-00218-0

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

DAVID D. JACKSON,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Scott Collier, Superior Court Judge

BRIEF OF APPELLANT

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A. INTRODUCTION

After a trial by jury in Clark County Superior Court, Appellant David Jackson was found guilty of Rape in the Second Degree by Forcible Compulsion. The Court sentenced Mr. Jackson to a minimum prison term of 78 months, with a maximum term of possible life imprisonment. The conviction of Mr. Jackson depended largely upon the testimony of a sexual assault nurse. The record reflects that defense counsel never consulted with a comparable defense expert in preparation for trial, leaving counsel unprepared to meet and rebut the important testimony of the sexual assault nurse, thereby denying Mr. Jackson effective assistance of counsel at trial.

B. ASSIGNMENT OF ERROR

> Mr. Jackson Received Ineffective Assistance of Counsel when his Trial Attorney Failed to Consult a Defense Expert to prepare for the State's Specialized Sexual Assault Nurse Testimony to Prepare for Trial.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does the Sixth Amendment Notion of Effective Assistance of Counsel Require a Defense Attorney to Consult with an Expert in a Sexual Assault Case where the State has Indicated a Sexual Assault Expert Witness will Testify?

2. Was Counsel Ineffective for Neglecting to Make Timely Objections to Hearsay Statements of an Alleged Victim Offered into Evidence by a Sexual Assault Nurse?

D. SUMMARY OF ARGUMENT

The testimony of expert witnesses is of paramount importance in rape cases because it often stands as the only corroboration of allegations involving the competing testimony of a single defendant and single complaining witness. When the State intends to call an expert witness in a sexual assault case, consultation with a defense expert is a necessary component of diligently investigating and preparing for such testimony.

Although very competent and effective during the bulk of the Mr. Jackson's trial, his attorney inexplicably failed to consult with an expert witness to prepare for the State's sexual assault expert testimony. As a result, the performance of counsel in preparation for, and during, the testimony of the sexual assault nurse fell below acceptable standards and prejudiced Mr. Jackson's right to a fair trial.

E. STATEMENT OF THE CASE

An ambulance responded to a 911 call in the early morning hours of August 21, 2014. The reporting party, a gas station attendant, asked for the ambulance to come to a Clark County, Washington, Chevron station to assess a female who was experiencing psychological problems. (VRP 102-103). The gas station attendant testified that Ms. O'Bannon had approached him and asked if she could use the restroom. (VRP 4). He described Ms. O'Bannon as "out of it" and indicated that she "didn't have any idea where

she was." (VRP 4). When the ambulance arrived, Ms. O'Bannon complained to the emergency medical technician ("EMT") of pain in her groin and throat. (VRP 106). She was unsure about where she was; and an EMT who responded in the ambulance characterized her case as not life-threatening, but needing evaluation at the hospital. (VRP 106).

While in route to the hospital, she told the EMT in the rear of the ambulance that she had been sexually assaulted after having been given a pill of some kind. (VRP 181). Neither EMT testified that Ms. O'Bannon asked to be transported to the hospital or asked for any specific treatment of any kind. In fact, Ms. O'Bannon testified on direct examination that she was feeling "lost – because she didn't know where [she] was at..." and that she "just was in panic mode." (VRP 68). Ms. O'Bannon did not testify that she asked to be transported to the hospital or to be seen by a sexual assault nurse for medical treatment. (VRP 23-90).

No employee of the hospital testified at trial, but Jillian Zeisler, a contract sexual assault nurse, testified that she was called to examine Ms. O'Bannon. (VRP 124). Ms. O'Bannon related the first detailed account of the alleged sexual assault during her interview by Jillian Zeisler. In her story to nurse Zeisler, Ms. O'Bannon, an eighteen year-old prostitute, claimed that she was contacted at a Shell gas station in Tacoma by a man she assumed would be a client for the evening. (VRP 129). The man asked her to get into

the car he was driving; and drove onto the freeway after she got inside. (VRP 129-130). In the car, Ms. O'Bannon claimed that the man began to touch her in various places, including putting his hand under her shirt to touch her breast and back. (VRP 130-131). Ms. O'Bannon told nurse Zeisler that the man told her that she needed to take some pain medication because "this is going to hurt," and gave her two blue pills from a bottle full of different colored pills. (VRP 131).

Ms. O'Bannon told nurse Zeisler that the man stopped the car at a rest area off of I-5 between Tacoma and Portland, and went to a secluded area where he forced her to perform fellatio. (VRP 132). Ms. O'Bannon claimed that the man ejaculated and caused her to gag, which got vomit and semen on both of their clothing. (VRP 132). After the man changed clothing, Ms. O'Bannon claimed that they drove away and the man began roughly penetrating her vagina with his fingers. (VRP 133). She described the man as having long fingernails which hurt her when he digitally penetrated her; and claimed that he also was pinching her and twisting her nipples, clitoris, ear, and lips. (VRP 133-134). At some point, Ms. O'Bannon claimed that she was forced to kneel on the car seat and that the man got behind her and anally penetrated[1] her with his penis. (VRP 134). The man allegedly "choked her about four times" while anally penetrating

[1] Ms. O'Bannon's testimony differed signifcantly in that she claimed the man digitally-

her. (VRP 134). Ms. O'Bannon told nurse Zeisler that the man pulled out, ejaculated somewhere, and then got back into his seat. (VRP 140). The man then gave Ms. O'Bannon some juice which was not in original packaging, and she "started to feel blacked out" after drinking it. (VRP 140).

Ms. O'Bannon told nurse Zeisler that the man dropped her off at the Prestige Apartments in Vancouver and the drove away. (VRP 140). Once he departed, Ms. O'Bannon indicated to nurse Zeisler that she waited about fifteen minutes and then walked over to a Chevron station, where she was ultimately contacted by police and EMT workers. (VRP 141).

In her conversation with City of Vancouver Police Officer Brian Billingsly, at the Chevron station prior to being transported to the hospital by the ambulance, Ms. O'Bannon revealed that she was from Tacoma and went for a ride with a man she met at a gas station. (VRP 13-14). She also indicated that she took pills that the man had given her; and then would not answer any additional questions posed by the police officer. (VRP 14). Officer Billingsly and the aid crew made what he called a mutual decision to get Ms. O'Bannon to the hospital. (VRP 14). Jillian Zeisler, a sexual assault nurse, was called to assess Ms. O'Bannon. (VRP 123).

As part of the rape investigation, nurse Zeisler collected blood and urine samples. (VRP 155-156), Ms. O'Bannon's jacket was tested for DNA

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penetrated her anus and that his long fingernails scratched her. (VRP 60-62).

by forensic scientist David Stritzke because it appeared to have a semen stain on it. (VRP 280). The DNA from the semen was matched to David Jackson. (VRP 287). Deputy Scott Holmes was advised of the match, learned that Mr. Jackson was in custody, and went to the Clark County Jail to contact him on April 27, 2015. (VRP 228-229). Having learned Mr. Jackson's identity, deputy Holmes followed up with Ms. O'Bannon and learned that she had previously met David Jackson,[2] on a social media website. (VRP 202-204).

Chris Johnston, a forensic toxicologist, examined blood and urine samples collected from Ms. O'Bannon by nurse Zeisler as part of the rape kit. He testified that the only drug found in Ms. O'Bannon's blood and urine was methamphetamine. (VRP 356-367). Mr. Johnson could not testify what affect, if any, the methamphetamine may have had upon Ms. O'Bannon because he was not aware when she had ingested it. (VRP 361).

At trial, Mr. Jackson faced three counts of First Degree Rape and one count of First Degree Kidnapping with Sexual Motivation. (CP 6). The State's amended witness list included, among several fact witnesses, expert witnesses Jillian Zeisler, sexual assault nurse, Chris Johnston, toxicologist, and David Stritzke, forensic scientist (CP 8). Defense counsel requested funds from the superior court to hire an investigator, and listed that

[2] Ms. O'Bannon did not know David Jackson's name or anything else, but his picture.

investigator as a witness (CP 10). The defense did not make any request of the superior court to obtain funds for expert witness services. Instead, the defense witness list simply reiterated all the expert witnesses from the State's witness list (CP 10).

Shortly before the end of its case in chief, the State indicated its intent to seek an instruction for Second Degree Rape by Forcible Compulsion as a lesser included offense for each of the three counts of First Degree Rape. (VRP 326-327). In its case in chief, the defense called only one witness, its investigator, Gary Rice.[3] After deliberation, Mr. Jackson was found not guilty of all three counts of First Degree Rape and the single count of Kidnapping. (CP 41, 42, 43, 47). However, the jury convicted Mr. Jackson of a single count of Second Degree Rape by Forcible Compulsion as a lesser included offense to one of the First Degree Rape charges. (CP 44). Mr. Jackson was sentenced to a minimum of 78 months, with a maximum term of life in prison. (CP 52); and timely filed a notice of appeal to this Court. (CP 66).

F ARGUMENT

This Court should reverse Mr. Jackson's conviction because he received ineffective assistance of counsel. For the most part, Mr. Jackson's

[3] Both parties had independently intended to call Chris Johnston as a witness, so the examination of Mr. Johnston was treated as if it were direct examination by both parties, so questioning was not limited by the scope of the other parties' examination. (VRP 339).

trial counsel performed admirably—a fact that cannot be disregarded by an objective evaluation of his work on Mr. Jackson's behalf. Unfortunately, there was a lapse in the most critical of aspects—preparation of a defense against the State's sexual assault expert witness testimony. Trial counsel neglected to consult with a single sexual assault expert witness in preparation for trial; and neglected to object to the hearsay statements attributed to the victim by a the sexual assault nurse, Jillian Zeisler.

The Sixth Amendment ensures the right to effective assistance of counsel as a means "to protect the fundamental right to a fair trial." *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). A fair trial depends on the "crucial role" counsel plays in the adversarial system; and effective counsel is necessary to ensure that defendants have "'ample opportunity to meet the case of the prosecution.'" *Id.* (quoting *United States v. McCann*, 317 U.S. 269, 275, 63 S.Ct. 236, 240, 87 L.Ed.2d 268 (1942)).

In order to prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate (1) that trial counsel's performance was defective; and (2) a reasonable probability that, but for the deficient performance, the outcome of the proceeding would have been different. *Id.* at 694. "To show prejudice, the appellant need not prove that the outcome would have been different but must show only a 'reasonable probability'—

by less than a more likely than not standard—that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *State v. Jones*, 183 Wn.2d 327, 339, 352 P.3d 776 (2015) (citing *Strickland*, at 694, *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996)). "The question is whether there is a reasonable probability that, absent the errors, a factfinder would have had a reasonable doubt respecting guilt." *Strickland*, at 694.

The measure of an attorney's performance is "reasonableness under prevailing professional norms." *Id.* at 688. Case law does not establish a particular set of detailed or rigid rules, because defense counsel should have wide latitude in making tactical decisions. *Id.* at 689. This wide latitude notwithstanding, decisions made in reliance upon inadequate trial preparation, inadequate factual investigation, or inadequate legal research are not tactical choices. *See e.g., Eldridge v. Atkins*, 665 F.2d 228, 236-37 n. 5 (8th Cir. 1981) (decision made as a result of inadequate trial preparation is not a strategic choice), *cert. denied*, 456 U.S. 910 (1982); *People v. Hayes*, 229 Ill.App.3d 55, 62-63, 593 N.E.2d 739, 744, 170 Ill.Dec 850 (Ill. App. 1992) (decision made in reliance of a misunderstanding of law is not strategic); *see also In re Brett*, 142 Wn.2d 868, 873, 16 P.3d 601 (2001) (en banc) (counsel ineffective for inadequate trial preparation); *Pirtle v. Morgan*,

313 F.3d 1160, 1169-73 (9th Cir. 2002) (counsel ineffective for failing to request diminished capacity jury instruction).

1. Trial Counsel was Ineffective for Failing to Consult with an Independent Expert Witness

The State's case against Mr. Jackson is a classic "he said—she said." The alleged victim was a prostitute with credibility issues; and corroboration was essential if the State was to have any hope of a conviction.

The State's witness list included several expert witnesses, most notably a sexual assault nurse, Jilian Zeisler. (CP 8). There is no record whether defense counsel interviewed Jillian Zeisler; but trial counsel neither retained nor consulted an independent defense sexual assault expert. The defense obtained funds to retain and call as a witness a defense investigator; but no defense sexual assault expert was called at trial. (CP 5, 10).

This mistake by trial counsel was grave, because the State relied upon nurse Zeisler's testimony as corroboration of the alleged rape. In fact, the prosecution called the alleged victim's account "damning evidence against the defendant" that the jury "should find believable" because it is "consistent on the details and corroborated by the forensic and medical evidence." (VRP 407). Throughout the State's closing argument, the theme of medical corroboration was repeated with respect to nurse Zeisler's testimony. (VRP 406-07) (scratches on neck corroborate anal penetration);

(VRP 407-08) (anal spasms corroborating penetration); (VRP 409) (calling the complaining witness' "detailed account for Ms. Zeisler" "consistent with the evidence.").

The prosecutor said in closing

> Because remember nurse Zeisler testified that she heard Alimah's account of what he did to her – that she examined her physically and that in her experience as a sexual assault nurse examiner the injuries – the findings she saw were consistent with Alimah's account of what had happened to her. Medical corroboration – medical corroboration from Ms. Zeisler – an expert in these matters. You don't have to take it from me. You heard her testimony and she's reliable.

(VRP 409).

The defense, quite simply, brought nothing to the case to rebut the State's argument that the medical evidence corroborated Ms. O'Bannon's account. A reasonably diligent attorney would have consulted with a medical expert who could testify about the significance of nurse Zeisler's medical findings. *See Gertsen v. Senkowski*, 426 F.3d 588 (2d. Cir. 2005)

> Here, defense counsel failed to call as a witness, or even consult in preparation for trial and cross-examination of the prosecution's witnesses, any medical expert on child sexual abuse. Counsel essentially conceded that the physical evidence was indicative of sexual penetration without conducting any investigation to determine whether this was the case.

Id. at 607-608.

The Second Circuit described the significance of failing to properly consult with experts in sexual assault cases.

> In sexual abuse cases, because of the centrality of medical testimony, the failure to consult with or call a medical expert is often indicative of ineffective assistance of counsel. This is particularly so where the prosecution's case rests on the credibility of an alleged victim, as opposed to direct physical evidence such as DNA, or third party eyewitness testimony.

Gersten, at 607 (citations omitted).

As in *Gersten*, there is no indication that defense counsel for Mr. Jackson endeavored to secure any testimony to rebut nurse Zeisler's claims that the physical evidence was "consistent with her account of what had occurred to her." (VRP 152-153).

In Washington, an attorney may be ineffective for failing to consult expert witnesses. When it decided *In re Brett*, the Washington Supreme Court held defense counsel to be inadequate for a number of reasons, including having neglected to diligently seek appointment of mental health experts and mitigation specialists where counsel knew that the defendant had mental health problems. 142 Wn.2d at 878.

Other courts have held trial counsel to be deficient where, as here, there was a failure to properly prepare for crucial medical evidence. *See e.g.*

Couch v. Booker, 632 F.3d 241, 246 (6th Cir. 2011) (A limitation on counsel's investigation into a defense must be supported by "reasonable professional judgment.") (quoting *Strickland*, 466 U.S. at 691).

> To make a reasoned judgment about whether evidence is worth presenting, one must know what it says. While the point of the Sixth Amendment is not to allow Monday-morning quarterbacking of defense counsel's strategic decisions, a lawyer cannot make a protected strategic decision without investigating the potential bases for it.

Id. (citing *Strickland*, at 690-91). The United States District Court for the District of Columbia held that trial counsel was ineffective for failing to adequately discuss the possibility and potential benefit of calling an expert witness on battered woman's syndrome. *United States v. Nwoye*, 60 F.Supp.3d 225, 235 (2014).

The effect of trial counsel's failure to consult an expert witness in the instant case can be contrasted with a Connecticut case where no prejudice was found for failure to call an expert. In *Michael T. v. Commissioner of Correction*, 307 Conn. 84, 52 A.3d 655 (2012), the Connecticut Supreme Court overruled a lower appellate court's decision that a trial attorney's ineffective assistance of counsel prejudiced the defendant. The Court relied upon two facts of that trial which are notably absent from Mr. Jackson's.

First, the Connecticut Supreme Court indicated that the jury likely credited the testimony of the victim over the defendant: "the record in the

present case leads us to the conclusion that any alleged errors of the petitioner's trial counsel did not deprive the petitioner of a fair trial...It is obvious that the jury credited the testimony of the child and discredited the testimony of the petitioner." *Michael T.*, at 666-67.

Second, the Court focused on the fact that, through cross-examination, defense counsel was able to establish the essential point to be proven without calling its own expert witness: "The essential point was conveyed to the jury: trichomonas infection can be spread through nonsexual means. If this fact hat not been established through cross-examination, in the absence of an expert, our result may have been different." In Mr. Jackson's case, the jury did not credit Ms. O'Bannon's testimony, and defense counsel's cross examination of the nurse Zeisler was inadequate.

The Jury Discredited Ms. O'Bannon's Testimony

An understanding of the jury's disregard for Ms. O'Bannon's testimony is most effectively developed in reference to how the State parsed out the charged conduct. For Count I, the state alleged digital penetration. (VRP 405). The State relied upon forced oral sex as the basis for Count II. (VRP 405). Count III was based upon anal penetration. (VRP 406). Count IV was the kidnapping charge. (CP 7).

Ms. O'Bannon claim about being kidnapped and forced to remain in the car was not believed, as evidenced by the jury's acquittal of Mr. Jackson

on Count IV. The jury acquitted Mr. Jackson of "forced oral sex" in Count II. (CP 41, 45). The jury acquitted Mr. Jackson of "anal penetration" in Count III. (CP 43). Mr. Jackson was convicted solely of a lesser included offense of Rape by Forcible Compulsion via digital penetration. Not coincidentally, that specific allegation was corroborated with medical evidence by the sexual assault nurse in her discussion of "excoriation" as it pertained to Ms. O'Bannon's genitalia. (VRP 148-149). The nurse described this finding as "not normal." (VRP 149-150). The only count for which Mr. Jackson was convicted had specific medical corroboration in the form of the sexual assault nurse's testimony.

The significance of the sexual assault nurse expert testimony, as compared to other experts, is evident when one considers that he was acquitted on the forced oral sex charge in Count II, notwithstanding the presence of his DNA in a stain on the jacket where Ms. O'Bannon alleged it would be found. Simply put, Ms. O'Bannon was not believed, except where nurse Zeisler gave corroborating medical testimony.

Defense Counsel's Cross-Examination of Nurse Zeisler was Inadequate

The substance of defense counsel's cross-examination of nurse Zeisler failed to meet any of the medical conclusions she drew from her examination of Ms. O'Bannon. As but one example, trial counsel did not explore possible other causes for rawness and tenderness of Ms. O'Bannon's

"excoriated" genitalia. (VRP 169). Defense counsel did not appear to attempt to establish that any of the physical evidence could have related to causes other than Mr. Jackson's alleged conduct. There was very little examination regarding temporality and causality during cross-examination. (VRP 166-172).

As yet another means for comparison, defense counsel's cross examination of nurse Zeisler was brief, comprising only six (6) pages of transcript. (VRP 166-172), whereas direct examination of nurse Zeisler involved fifty (50) pages of transcript. (VRP 114-164). While meaningful impeachment of a witness is not established merely by a voluminous examination, the disparate size of the examinations in this case reveals that nurse Zeisler's testimony was largely uncontroverted and unimpeded by defense counsel. Moreover, defense counsel failed to timely object to admission of hearsay testimony not related to medical diagnosis of treatment.

2. Unprepared to Examine the State's Sexual Assault Nurse Witness, Defense Counsel Stood Idly by while Nurse Zeisler Bolstered the Alleged Victim's Claim with Inadmissible Hearsay Insufficiently Related to Medical Diagnosis or Treatment.

A statement which would otherwise be hearsay may be admitted, regardless of the declarant's availability, if that statement is "made for the purposes of medical diagnosis or treatment..." ER 803(a)(4). "A party demonstrates a statement to be reasonably pertinent when (1) the declarant's

motive in making the statement is to promote treatment, and (2) the medical professional reasonably relied on the statement for purposes of treatment." *State v. Williams*, 137 Wn.App. 736, 746, 154 P.3d 322 (2007) (citing *State v. Butler*, 53 Wn.App. 214, 220, 766 P.2d 505 (1989)). Additionally, statements of fault or blame are generally inadmissible. *Williams*, at 746 (citing *In the Matter of the Dependency of Penelope B.*, 104 Wn.2d 643, 656, 709 P.2d 505 (1989)).

In *Williams*, this Court held that the hearsay statements "were admissible under the medical diagnosis exception because J.A.D. underwent the medical examination for 'a combination' of purposes—medical as well as forensic." *Id.* The Court focused on testimony that the purpose of the sexual assault questionnaire with the hearsay statements "was two-fold: to gather evidence and to identify treatable injuries." *Butler*, at 747. This Court also considered that J.A.D. answered "Not right at first" when asked if J.A.D. needed any specific medical treatment. *Id.* It reasoned that "at first" does not demonstrate a purely forensic motive for the hearsay testimony. *Id.* This is sensible, because "at first" suggests something different followed.

The record in the instant case reveals no testimony that Ms. O'Bannon asked to be transported to the hospital to seek treatment. The record is similarly devoid of testimony that the findings of nurse Zeisler's examination of Ms. O'Bannon were communicated to a treating physician or

formed the basis for any subsequent medical treatment at the hospital or any other medical setting. After nurse Zeisler examined Ms. O'Bannon for anything "needing imminent medical attention" (VRP 117), her testimony focused upon her forensic investigation into the alleged rape.

The evidence on the record reveals that the statements to Ms. Zeisler were made during a sexual assault examination with only forensic implications—there was no testimony about medical treatment, either before or after the forensic examination. Furthermore, statements attributing fault and describing Mr. Jackson's alleged demeanor had no business coming into evidence under ER 803(a)(4).

You Need to Take Some Pain Meds Because This is Going to Hurt

The above statement, found at VRP 131, is but one dramatic example of a hearsay statement, attributed to Ms. O'Bannon by nurse Zeisler, which is not at all related to medical diagnosis or treatment. It was offered to prove the truth of the matter asserted—that the perpetrator intended to cause harm; and it is hearsay because nurse Zeisler testified that Ms. O'Bannon told her the perpetrator said that. The only testimony that might be appropriate for medical diagnosis or treatment regarding the pills would have been, "he gave her two blue pills – a little bigger than Aleve's (sic)." (VRP 131). The fact that nurse Zeisler testified, without objection to the alleged victim's statements about the perpetrator's intent to hurt her was

prejudicial and inadmissible, and should have triggered an objection and motion to strike the testimony.

More vulgar and perhaps prejudicial examples of such inadmissible hearsay also escaped objection. After allegedly putting his fingers inside Ms. O'Bannon's vagina, nurse Zeisler testified that Ms. O'Bannon told her that the perpetrator "forced her to lick his fingers." (VRP 133). Nurse Zeisler also testified that Ms. O'Bannon told her that the defendant "pulled his pants down and started playing with himself." (VRP 133). The allegedly malicious intent of the perpetrator was bolstered through the nurse's testimony about inadmissible hearsay: "You're making me angry. Stop crying or I'm going to throw you out of the car." (VRP 131).

Nurse Zeisler's testimony was part of a forensic examination, plain and simple. Ms. O'Bannon sat, unattended and sleeping, in an examination room at the hospital waiting for her to arrive. (VRP 82). There was no testimony from a triage nurse or other hospital staff member. The idea that nurse Zeisler would be looking for imminent medical injury that was neglected during an initial screening when Ms. O'Bannon arrived at the hospital does not stand to reason. Ms. O'Bannon was left unattended in an examination room to await a professional *forensic* examination into a claim of sexual assault so that proper evidence gathering and investigative techniques could be observed. The State's "medical diagnosis or treatment"

evidence does not meet the test of ER 803(a)(4). Defense counsel either should have been more prepared to address that testimony pretrial, or been ready to enter timely objections to prevent its admission at trial.

G. CONCLUSION

Mr. Jackson's Sixth Amendment right to a fair trial was prejudiced because he received ineffective assistance of counsel. Although trial counsel performed admirably for much of the proceeding, serious deficiencies in preparation and performance in the context of critical sexual assault expert testimony hopelessly prejudiced Mr. Jackson. By all appearances, trial counsel did not consult with an independent sexual assault expert to prepare for trial. This resulted in counsel being unprepared to meet the testimony of State's sexual assault nurse with defense expert testimony, effective cross-examination, or both. The nature of sexual assault investigations and the profound corroborative effect of expert testimony strongly militate in favor of defense counsel consultation with sexual assault expert witnesses. Even if a defense expert does not testify at trial, such consultation will invariably help a defense attorney construct more effective cross-examination and more meaningful objections to the State's expert testimony. The Court should reverse Mr. Jackson's conviction for rape, and remand the matter for a new trial on the sole remaining count—the charge of Rape by Forcible Compulsion.

Respectfully Submitted this 17 day of May, 2015.

LAW OFFICE OF BRET ROBERTS, PLLC.

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Attorney for Appellant

PROOF OF SERVICE

I, Bret Roberts, certify that, on this date:

I filed David Jackson's Brief of Appellant electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of the same through the Court's filing portal to:

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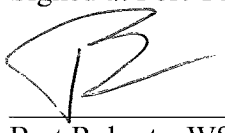
I put a copy of appellant's brief in the mail to Mr. Jackson at Washington State Correction Center in Shelton, Washington.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Port Townsend, Washington, on May 17, 2016.



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COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. DAVID D. JACKSON, Appellant	SUPPLEMENTAL PROOF OF SERVICE

I, Jennifer Dempsey, certify that, on May 23, 2016:

I mailed a copy of Appellant's Opening Brief to the client, David D. Jackson, at Airway Heights Correction Center at the following address:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Port Townsend, Washington, on June 6, 2016.

Jennifer Dempsey
Legal Assistant to Bret Roberts, WSBA 40628